



WINTER 2023

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INTRODUCTION

Since I began Brach Eichler Personal Injury Attorneys, our personal injury lawyers have been dedicated to providing exceptional relationships with our clients and community. Our successful results total more than \$425 million! Along with the recognition of our peers, these results demonstrate that Brach Eichler Injury Lawyers is one of the best in the metropolitan area.

By creating this newsletter, we hope you will gain a better understanding about who we are, and how our passionate advocates seek to always achieve full and complete justice in each and every case.

We believe this newsletter will be a valuable resource to injured victims and families throughout the region. We also encourage anyone with additional questions about their case or our firm's services to contact us today!

As always, Brach Eichler Personal Injury Attorneys are available to provide guidance and/or assist with your personal injury legal matters. If you have any questions or would like additional information regarding any of the articles contained in this 2022 Year in Review Newsletter, please do not hesitate to contact us. Thank you for your continued support. Be well, be safe.

Sincerely,

Edward Capozzi

**IN 2022,
OVER \$40
MILLION
RECOVERED!**



2022 YEAR IN REVIEW

VERDICTS & SETTLEMENTS

1. **\$3.6 Million** for a NJ man injured in a slip and fall on Ice in Atlantic City.
2. **\$2.475 Million** for a Wrongful Death case in New Jersey.
3. **\$1.5 Million** for a women injured in a NJ auto accident.
4. **\$1.225 Million** for a New York woman injured in Westchester County, NY.
5. **\$1.1 Million** for a woman injured in a NJ auto accident.
6. **\$950,000.00** for NJ man injured in a Garden State Parkway accident.
7. **\$925,000** for a man injured in a NJ auto accident.
8. **\$875,000** for a passenger in a ride share vehicle.
9. **\$850,000.00** for a man injured in an accident in Connecticut .
10. **\$820,000** for a Bergen County Man who slipped at a car wash.
11. **\$765,000** for a woman who slipped on ice at an Essex County Car Wash.
12. **\$750,000** for a Los Angeles man injured in a NJ car accident.



WHAT YOU NEED TO KNOW:

BRACH EICHLER SETTLES FALL DOWN CASE FOR \$3.6 MILLION AFTER DEFEATING NEW JERSEY SUPREME COURT'S NEWLY ADOPTED "ONGOING STORM" DOCTRINE

BY EDWARD CAPOZZI, ESQ.

Brach Eichler Personal Injury Chair Edward Capozzi and Associate Jeremy Hylton were able to settle a slip and fall on ice that occurred in Atlantic City for \$3.6 million dollars after narrowly escaping a summary judgment motion regarding an ongoing storm at the time of the fall. The New Jersey Supreme Court's June 2021 decision in *Pareja v. Princeton International Properties* held that a property owner has no duty to clear snow and ice during an "ongoing storm." However, a defendant that claims an ongoing storm does not receive an automatic dismissal if reasonable minds could differ as to when the storm concluded. Thus, when there are differing contentions as to when a storm ended, summary judgment is inappropriate.

In our case, there was testimony from weather experts that the storm ended around 10:45 am and the fall occurred at 11 am. The time the storm ended was calculated by using the estimated time of the storm at various weather stations in the area. Our client stated he woke up at 8 am and looked out the window of his hotel and it was not raining or snowing. He also testified when he went outside before the fall there was no precipitation of any kind. This testimony which occurred well before the June 2021 Supreme Court decision was the evidence that carried the day. A jury could conclude that there was no precipitation in the area at the time of the fall based on the credibility of the plaintiff. They could have also considered the 15 minutes prior to the fall as the whether that amount of time was reasonable to clear the ice from the property. It was a close call but we were able to prevail on the motion and settle the matter.



WHAT TO DO IF YOU FALL ON SNOW AND ICE

By Kristofer Petrie, Esq

1. Make sure you do not move if you suspect a fracture;
2. Identify what caused you to fall;
3. Immediately photograph the snow and ice that caused you to fall;
4. Call the police to report the incident;
5. If at a retail property, find somebody that works there and ask to fill out an incident report;
6. Ask if they have cameras that recorded the incident and request to see the footage;
7. Record the footage with your phone or, if they refuse to let you see it, specifically request that they preserve the video footage for your future use;
8. Go the hospital and get checked out;
9. Call Brach Eichler Injury Lawyers



THE NEW JERSEY INSURANCE FAIR CONDUCT ACT: HOLDING INSURANCE COMPANIES ACCOUNTABLE

BY DANIEL LEONE

On January 18, 2022, Governor Murphy signed into law the New Jersey Insurance Fair Conduct Act (“Act”). The Act allows our clients to make insurance bad faith claims in the handling and payment of claims for uninsured/underinsured (“UM/UIM”) benefits.

Under the Act, a claimant has a right to sue their insurance companies if the carriers act in bad faith and deny, delay, or underpay legitimate claims in UM/UIM cases. In other words, the Act seeks to prevent insurers from imposing “unreasonable” delays or denials of claims.

If an insurance company violates the Act, a claimant shall be entitled to: (1) actual damages caused by the violation of the Act, which includes actual trial verdicts that shall not exceed three times the applicable coverage amount; and (2) pre- and post-judgment interest, reasonable attorney’s fees, and all reasonable litigation expenses.

As a practical matter, insurance carriers have become more willing to resolve UM/UIM claims given the threat of the remedies under Act. We anticipate that this trend will continue. Brach Eichler will stay at the forefront of legal issues arising from the Act to protect the interests of our client.

IS YOUR AUTO INSURANCE REALLY PROTECTING YOU?

BY JEREMY HYLTON

We all know the frustration of shopping around for insurance for the best quote. So much so, that it became part of Progressive’s schtick to show you quotes between all major insurers. The goal is simple, which is to blind you with the shiny, bright lights of cheaper premiums. Do not be misled by the dazzle and glamor of an adjuster telling you that they can save you hundreds of dollars on your policy. In reality, what they are likely doing is lowering your limits to the bare minimum. Insurance is unnecessarily convoluted and nuanced, by design. With these tips, you should be well covered in the unfortunate event you are involved in a collision.

What I consider to be the most important part of an auto policy is the Personal Injury Protection coverage, also known as “PIP.” In New Jersey, you must maintain minimum limits of \$15,000 in PIP coverage. PIP pays your medical bills for any treatment you need as a result of a collision. \$15,000 in PIP coverage it is not a lot. That \$15,000 will pay for an Emergency Room visit (assuming you do not need emergency surgery), chiropractic/physical therapy treatment, and maybe an epidural injection if your pain never subsides. After your PIP is exhausted, you are left holding the bag for the remaining bills. My recommendation is to up your PIP limits to \$250,000. This should cover all the treatment you will need, including major surgeries. Yes, you will need to pay a few dollars more in your premium each month, but it will not break your bank account. However, not upping your PIP limits very well could lead you into financial hardship.

Besides PIP, I also advise clients to raise their Uninsured/Underinsured benefits, known as “UM/UIM.” This is the part of the policy that is tricky to understand, so the best way to explain it is to give a few hypothetical scenarios.

1. You were just involved in a car wreck and it was not your fault. You are hurt and want to sue the driver who caused the wreck. There is only one problem, the driver has no insurance. So you turn to your auto policy and see you have UM coverage in the amount of \$15,000. This means you can file a bodily injury claim with your own insurance and be paid up to \$15,000, depending on the severity of your injuries. That is it, though, there is no other recourse.
2. Imagine the same scenario, but the driver does have insurance with bodily injury limits at the state mandatory minimum of \$15,000. You are really hurt though. You think your injuries are worth well over \$15,000 for the pain and suffering you have endured. Fortunately, the driver's insurance agrees with you and pays you the full \$15,000 under their policy. Great, now let us check what your UIM benefits are under your policy to see if you can get more money. You find it is the same amount as the other driver, \$15,000. In this scenario, as in the first, your max recovery is \$15,000. You do not get to go after your own insurance company for an additional \$15,000 in UIM benefits since it was your decision to have UIM benefits in the amount of \$15,000. What you are essentially saying is you value your life as much as that other driver valued you.
3. Same scenario, but this time you have \$100,000 in UIM coverage. Again, this does not mean you get to go after an additional \$100,000 once the at-fault driver's insurance has paid its \$15,000. Instead, your insurance gets a credit for that \$15,000, then you can recover up to an additional \$85,000 under your UIM benefits. Potentially recovering a total of \$100,000, instead of \$15,000, sounds much better, right? This will, of course, increase your premium. Just like PIP, it should not be enough to break the bank and can payout tenfold if you ever need to utilize it.

Safe travels, New Jersey.



PERSEVERANCE: LOSING THE BATTLE, WINNING THE WAR

BY COREY DIETZ

“The arc of the moral universe is long, but it bends toward justice.” - Dr. Martin Luther King, Jr.

On December 10, 2016, a young father-to-be was driving home from his work holiday party to his expectant fiancé. He was on Interstate 280 in West Orange, New Jersey, in the early morning hours when he collided with a disabled tractor-trailer that was illegally parked partially in his lane of travel. The collision resulted in the tragic death of both the driver and the operator of the tractor-trailer.

An investigation of the collision by the New Jersey State Police determined that both drivers were at fault for the collision. An autopsy had confirmed alcohol was present in the driver's system. With these facts, the investigation resulted in the collision being closed as nothing more than a tragic accident. However, the family wanted answers.

Initially the case was handled by two prior law firms who both said there was nothing they could do to help. By chance and prior to exhausting all options, the family reached out to Brach Eichler and we decided to fight and get the answers as to how such a collision could have occurred.

AS A FIRM WHO IS NOT AFRAID TO TAKE ON THE TOUGH CASES THAT ARE OFTEN REJECTED BY OTHERS, THIS CASE STANDS OUT.

After filing the Complaint, I received information that at the time of the collision the tractor-trailer was grossly overweight in violation of federal law. The truck also lacked necessary reflective tape on its rear that is designed to provide visual cues to motorists as to a truck's distance and "conspicuity" – defined as the quality of being clear or bright. Further, the operator of the tractor-trailer failed to put out any warning flares or hazard triangles to warn oncoming motorists. Finally,

and most significantly, virtually all of the brakes of the truck were "Out of Service" at the time of the crash and the truck should have never been on the road.

Following oral argument with a three judge panel, the Appellate Division agreed with our position that the negligence of the trucking company as well as its operator clearly created a question that only a jury could decide and reversed the trial judge.

It was only after this appeal that the insurance company for the trucking company finally agreed to pay the family for the negligence of the company. After almost six years of bitter fighting the family of the victim at last had the answers that they initially sought and most importantly, got the justice they deserved despite the many obstacles that were put in front of them.

As a firm who is not afraid to take on the tough cases that are often rejected by others, this case stands out. We were honored to spend numerous hours investigating this collision, fighting the insurance company and bringing justice to a family that was long overdue.

BRACH EICHLER IN THE NEWS

Congratulations to **Edward P. Capozzi** who was recognized as a "2023 Best NJ Lawyer for Families" by *New Jersey Family*.

Congratulations to **Alex Capozzi** who was recognized by *New Jersey Law Journal's* "[2023 New Leaders of the Bar](#)."

The following [Litigation attorneys were promoted to Members](#)! Congratulations to **Alex Capozzi**, **Shannon Carroll**, **Eric Magnelli** and **Jay Sabin**.

February 17, 2023, **Edward Capozzi** presents at the Alabama Association for Justice about "[Creative Ways to Win, Thinking Outside the Box](#)."

Thursday, February 23, 2023, **Edward Capozzi** presents at New Jersey Association for Justice, Winter Seminar, on "[Maximizing Damages: Effective Use of the Time Unit Rule](#)."

June 14, 2023, **Edward Capozzi** presents at the [Tennessee Trial Lawyers Annual Convention](#) about "The Domino Theory, Proving Proximate Cause at Trial."

June 22, 2023 **Edward Capozzi**, presents to the New Jersey Association for Justice about "[Exposing Deceptive Medicine Seminar](#)."



ATTORNEY SPOTLIGHT

EDWARD CAPOZZI, ESQ.

“**THIS THEORY CHANGED THE WAY LAWYERS PROVED PROXIMATE CAUSE IN ALL 50 STATES AND CANADA.**”



Please go to www.trialguides.com/blogs/authors/edward-p-capozzi to purchase *The Domino Theory, Proving Your Case with the Domino Theory, and Proving Proximate Cause in MIST Cases – On Demand CLE*

How many years have you been practicing? 18

Why did you get into Personal Injury Law? I wanted to get away from the entertainment business and I got a job with a med-mal firm and was given a lot of responsibility then fell in love with medicine and the law. Then I worked for a firm in Philadelphia where I learned from some brilliant attorneys who taught me the trade.

How had your experiences prepared you for this role? Being a former musician and front man of a band, performing in a court room is extremely similar to performing on stage. I used to leave my heart on the stage at the end of the night and now I leave my heart on the court room floor at the end of the day...

Have you ever worked on a case that was hard not to take home with you? Although the cardinal rule is to NOT take it home with you, I find it impossible not to take home with me because in order to get the best result, you have to be intimately involved with the case.

You are an author, tell me about the book and how it came to be? After trying my first 30-40 trials the common denominator in all those trials was the jury requesting from the judge to re-read the “proximate cause” jury instructions. Obviously, at that point, I became aware I needed to find a simple way to explain the concept of proximate cause which is the negligence of the defendant setting in motion a sequence of events. To me, it sounded like dominoes, so I began using dominoes – large ones, in court with facts of the case on them, and this theory changed the way lawyers proved proximate cause in all 50 states and Canada. After the success of dominoes in court I wrote the book....

What are your greatest strengths as a lawyer? My connection with the jury.

What is your greatest accomplishment as a lawyer so far and why? Winning the award in 2014 for the largest verdict in state or my presidency with the NJ trial lawyers association.

How many successful verdicts have you won in court? I have tried well over 100 cases in 5 different states and won approximately 90%.

How do you keep clients updated on the progress of their case? Ideally, there should be a back and forth between the client and lawyers, but due to the nature of the cases there is so much information we need to exchange so there is constant communication between my office and the client.

What kind of case tactics do you use to reach a successful outcome? One of the ways I handle a case differently than most other PI lawyers is I spend a lot of money creating exhibits, storyboards, animations, videos, photographs, and models to show not only an insurance company but ultimately a jury how devastating the impact of these injuries are on the lives of our clients.

How much will it cost to hire you? The cost to hire a personal injury lawyers is the same regardless of who the attorney is. We only get paid if the client gets paid. And its typically 1/3 of the award. If we don't achieve a result for you then there is no cost or fees paid for our service.



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